

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-1789 (BRL)

SIPA Liquidation

In re

BERNARD L. MADOFF,

Debtor.

No. 09-11893 (BRL)

Chapter 7

**AFFIDAVIT OF MICHAEL SLATTERY, JR. IN SUPPORT OF JOINT
MOTION OF TRUSTEE AND SECURITIES INVESTOR PROTECTION
CORPORATION FOR AN ORDER SUBSTANTIVELY CONSOLIDATING
THE ESTATE OF BERNARD L. MADOFF WITH THE SIPA PROCEEDING
OF BERNARD L. MADOFF INVESTMENT SECURITIES LLC**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Michael Slattery, Jr., being duly sworn, deposes and says :

1. I am a Senior Managing Director with FTI Consulting, Inc ("FTI"). I am also a certified public accountant, an attorney, and former special agent of the Federal Bureau of Investigation. In connection with these positions, I have more than 25 years of experience in conducting financial and fraud investigations.

2. On or about December 30, 2008, FTI was retained by Irving H. Picard, the Trustee appointed by the Securities Investor Protection Corporation for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”), under the Securities Investor Protection Act, among other things, to examine the financial affairs of BLMIS.

3. During the course of carrying out my investigative duties in this matter, my colleagues and I have interviewed in person or by telephone business associates and other persons who have had business dealings with, or who we were told had information relevant to, the business and financial affairs of BLMIS and its sole member and chairman, Bernard L. Madoff (“Madoff”).

4. Also during the course of my engagement in this matter, I have personally reviewed thousands of documents, as well as schedules prepared and information collected by my colleagues, relating to Madoff’s personal, business and financial affairs, including his assets and liabilities, as well as BLMIS’s assets and liabilities and business.

5. I make this affidavit based upon the information and knowledge acquired during the course of my retention, as briefly described above.

6. Corporate records¹ reveal that Madoff was the sole member and chairman of BLMIS since its founding in 1960. Originally formed as a sole proprietorship, BLMIS was reorganized as a single member LLC on or around December 4, 2000. Madoff was intimately involved in the day-to-day operations of BLMIS.

7. BLMIS used two primary bank accounts to fund its disbursements, one held at The Bank of New York Mellon (“BONY 621 account”) and another held at JP Morgan Chase

¹ The books and records of BLMIS are, at best, incomplete, though there is no reason to believe they are unreliable. The Trustee, through his counsel and his consultants such as FTI, are endeavoring to supplement the corporate books and records with third party records, where available.

Bank, N.A. ("JPMC 703 account"). BLMIS also had disbursement accounts that were related to both of these primary accounts from which checks were written. The disbursement accounts were funded by the primary accounts.

8. The BONY 621 account was considered the company's primary cash concentration account that was used to fund operating and other expenses. The JPMC 703 account was primarily used for customer deposits and withdrawals from the investment advisory business. Amounts invested in BLMIS by customers were deposited into the JPMC 703 account. Similarly, the majority of redemptions by customers were withdrawn from the JPMC 703 account. Millions of dollars were transferred between the BONY 621 account and the JPMC 703 account between 2001 and 2008.

9. BLMIS investment advisory customers generally wired funds for investment to the JPMC 703 account. The wire instructions provided by BLMIS to its customers directed them to wire funds to JPMC, "For Further Credit To: Bernard L. Madoff." An example of one such instruction provided to a customer is attached hereto as Exhibit 1.

10. There were transfers of funds between the two primary BLMIS bank accounts and Madoff Securities International LLC ("MSIL"), the London entity owned and run by Madoff. BLMIS transferred to MSIL close to \$500 million between December 2001 and December 2008. During the same time period, MSIL transferred back to BLMIS approximately the same amount.

11. For the 2007 tax year, the only year for which we have tax returns, we have not found a tax return for BLMIS. There is also no evidence that Madoff elected to have BLMIS treated as a corporation for federal tax purposes. On the amended 2007 joint return, Madoff and his wife, Ruth Madoff, reported business income of \$9,422,238, but no supporting schedule was attached. See 2007 tax return, attached hereto as Exhibit 2.

12. The books and records of BLMIS show that in the past seven years and perhaps longer, Madoff received a cash draw from BLMIS at irregular intervals. For example, in 2007 Madoff had cash draws close to \$5 million, including one payment of \$2 million on a single day. See account statement attached hereto as Exhibit 3.

13. To date, our investigation has not uncovered any other significant sources of income for Madoff aside from BLMIS.

14. The books and records of BLMIS show that Madoff utilized BLMIS funds to extend loans in his name to family members. Pursuant to an unsecured promissory note dated December 12, 2007, Madoff made a loan in the principal amount of \$9 million, with an interest rate of 4.13% to his brother, Peter Madoff. The note was payable to Madoff personally. The money used to fund this loan came from a BLMIS bank account at JP Morgan Chase Bank, however BLMIS received no apparent benefit from this loan. To date, we have not discovered records of any interest or principal ever being paid to BLMIS. A copy of the note and relevant account statement is attached hereto as Exhibit 4.

15. The books and records of BLMIS show that Madoff made loans in his name to Madoff Technologies, LLC. Madoff Technologies, LLC is owned in part by Ruth Madoff, Shana Madoff, Jennifer Madoff and Peter Madoff. Pursuant to a demand promissory note dated October 31, 2000, Madoff loaned approximately \$5.5 million to Madoff Technologies, LLC. Despite the fact that Madoff is listed as the payee on the note, the money used to fund this loan came from a BLMIS bank account, and, again, there was no apparent benefit to BLMIS. The demand promissory note with Madoff named as payee, is attached hereto, together with the relevant account statement, as Exhibit 5.

16. The books and records of BLMIS show that Madoff used BLMIS funds to make capital contributions on behalf of his family members to Madoff Energy LLC, an entity owned in equal parts by Andrew Madoff, Mark Madoff, and Shana Madoff. These payments total \$1,700,000. While Madoff used BLMIS property to make the capital contributions, there is no evidence that BLMIS or Madoff received dividends paid out by Madoff Energy LLC or received any repayment. See the relevant account statements, attached hereto as Exhibit 6.

17. The books and records of BLMIS show that Madoff used BLMIS funds to satisfy capital calls on his wife Ruth Madoff's behalf to Sterling American Property IV, Sterling American Property V and other Sterling entities (collectively "Sterling Entities"). These payments total more than \$4.5 million. While Madoff used BLMIS property to satisfy the capital calls, Ruth Madoff, not BLMIS, received income from the Sterling Entities. To date, we have not found evidence that BLMIS received investment income from the Sterling Entities. See the attached capital call requests and account statements showing corresponding payments, attached as Exhibit 7.

18. The books and records of BLMIS show that Madoff also used BLMIS funds to purchase assets for his personal enjoyment and that of his family. Madoff and his family created a web of shell companies to hold these assets after purchasing same with BLMIS funds. For example, BLMIS funds were used to purchase and maintain two yachts, the first in 2003 and the second in 2007, with a total value of over \$6 million. These yachts were used by Madoff and his family and served no apparent business purpose. The second yacht, named Bull, is held by Yacht Bull Corporation, a corporation in which Ruth Madoff has an interest. The invoices and account statements illustrating these payments are attached hereto as Exhibit 8.

19. The books and records of BLMIS show that BLMIS funds were also used to purchase ownership shares in private jets. Madoff organized a company, BLM Air Charter LLC, of which he was the sole member, and used the company to hold the aircraft interests. The funds used to make the purchases came from BLMIS. It appears that when Madoff became concerned about personal potential liability related to the aircraft, on or about January 30, 2001, he transferred economic interest in BLM Air Charter LLC to BLMIS, thus ensuring he could retain the benefit of the airplanes while passing the risk on to BLMIS. See Assignment Agreement and relevant account statement and bill of sale, attached hereto as Exhibit 9.

20. The books and records of BLMIS show that Madoff sent BLMIS funds to the law firm of Todtman, Nachamie, Spizz & Johns, P.C. for the benefit of Andrew Madoff in the amount of \$430,000 on September 12, 2008, for which BLMIS received no apparent benefit. The account statement illustrating this payment is attached hereto as Exhibit 10.

21. The books and records of BLMIS show that Madoff also sent BLMIS funds to another law firm, Snow Becker & Krauss P.C. for the benefit of Andrew Madoff in the amount of \$4,055,000 on October 1, 2008, for which BLMIS received no apparent benefit. The account statements illustrating this payment is attached hereto as Exhibit 11.

22. On September 12, 2008, Andrew Madoff entered into contract to purchase an apartment at 433 East 74th Street, New York, New York for the purchase price of \$4,378,475. Andrew Madoff closed on the property on October 6, 2008. It appears that Andrew Madoff was represented in this transaction by Mark Borten, Esq., of Snow Becker & Krauss P.C., the same firm that received the wire transfer in the amount of \$4,055,000 on October 1, 2008. The deed illustrating this purchase is attached hereto as Exhibit 12.

23. The books and records of BLMIS show that Madoff twice sent BLMIS funds to the law firm of Patricia Halsted in the amounts of \$640,000 and \$6,005,000 on May 28, 2008 and June 6, 2008, respectively, for which BLMIS received no apparent benefit. The account statements illustrating these transfers are attached hereto as Exhibit 13.

24. Mark and Stephanie Madoff purchased a property in Nantucket on or around June 9, 2008, for a purchase price of \$6,500,000. The law firm of Patricia Halstead represented them in connection with this purchase. See closing documents sent by Patricia Halstead, attached hereto as Exhibit 14.

25. The books and records of BLMIS show that Madoff utilized BLMIS funds to extend a loan in his name for the benefit of Mark and Stephanie Madoff. Pursuant to an unsecured promissory note dated June 16, 2008, Madoff made a loan in the principal amount of \$6,500,000, with an interest rate of 3.20% to Mark Madoff and Stephanie Madoff. The note was payable to Madoff personally. The money used to fund this loan came from a BLMIS bank account, however BLMIS received no apparent benefit from this loan. To date, we have not discovered records of any interest or principal ever being paid to BLMIS. A copy of the note is attached hereto as Exhibit 15.

26. The books and records of BLMIS show that Madoff twice sent BLMIS funds to the law firm of Guston & Guston LLP in the amounts of \$475,000 and \$2,225,000 on June 25, 2008 and October 16, 2008, respectively, for which BLMIS received no apparent benefit. The account statements illustrating these transfers are attached hereto as Exhibit 16.

27. Guston & Guston LLP represented Ms. JoAnn Crupi ("Crupi") and Judy Bowen ("Bowen") in connection with the purchase of a property in New Jersey for \$2,225,000 plus related expenses. Crupi was an employee of BLMIS for over 25 years and worked in the

investment advisory business of BLMIS. Although Crupi and Bowen both signed a contract of sale on June 2, 2008, only Bowen's name appeared on the deed to the property. The deed and related documents illustrating this purchase are attached hereto as Exhibit 17.

28. The lease to the BLMIS premises at 885 Third Avenue, New York, NY, was in the name of Bernard L. Madoff and not BLMIS. Despite this, BLMIS made monthly rent and related payments between 1996 and 2008 totaling approximately \$34,600,000. A schedule listing these payments is attached hereto as Exhibit 18.

29. In his individual capacity, Madoff filed New York City commercial rent tax returns for the premises at 885 Third Avenue. The books and records of BLMIS show that the funds used to make these tax payments, however, came from a BLMIS account, totaling approximately \$1,750,000 between 1996 and 2008. A schedule listing these payments is attached hereto as Exhibit 19.

30. The books and records of BLMIS show that payments of approximately \$471,000 were made from BLMIS funds to Coecles Harbor Marina & Boatyard, a marina located in Long Island, New York. Madoff owned a property in Montauk, Long Island. A schedule listing these payments is attached hereto as Exhibit 20.

31. The books and records of BLMIS show that payments of approximately \$950,000 were made from BLMIS funds to at least four different country clubs, on behalf of himself, his wife, and his brother Peter Madoff and Peter's wife, Marion Madoff. A schedule listing these payments is attached as Exhibit 21.

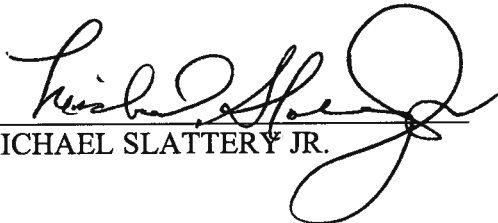
32. On the BLMIS payroll were several individuals for whom there is no evidence that they worked for BLMIS: (a) Praxides Dirilo, Madoff's housekeeper, (b) Juliette DiMaggio,

Madoff's housekeeper in Florida, and (c) Richard Carroll, Madoff's boat captain. Copies of each of their 2008 W-2s are attached hereto as Exhibit 22.

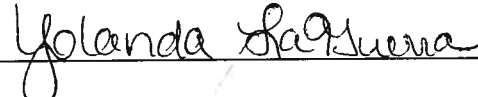
33. In addition, an individual named Christopher Warrin was listed on the BLMIS payroll. There is no evidence that Mr. Warrin was an employee of BLMIS, but is instead the boat captain for Frank DiPascali. Mr. DiPascali is a BLMIS employee who worked in the investment advisory business of BLMIS. A copy of Mr. Warrin's 2008 W-2 is attached hereto as Exhibit 23.

34. Marion Madoff, Peter Madoff's wife, was listed on the BLMIS payroll with a yearly salary for 2008 of \$163,500. There is no evidence that Marion Madoff performed work for BLMIS. A copy of Marion Madoff's 2008 W-2 is attached hereto as Exhibit 24.

35. Account statements from American Express show that the following Madoff family members and Madoff's boat captain had corporate American Express cards: Bernard Madoff, Peter Madoff, Mark Madoff, Andrew Madoff, Shana Madoff, Ruth Madoff, Marion Madoff, Deborah West Madoff and Richard Carroll. There is no evidence that the latter three individuals performed work as BLMIS employees. Each month, BLMIS paid the American Express bill. The account statements illustrating these payments are attached hereto as Exhibit 25.


MICHAEL SLATTERY JR.

Subscribed and Sworn to before me
this 5th day of May, 2009


Notary Public

YOLANDA LaGUERRA
Notary Public, State of New York
No. 01LA4977093 New York
Certificate Filed in New York County
Commission Expires January 28, 2011